

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

OA No. 38/04

~~Bilaspur~~, this the 16th day of March, 2005

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Dr.V.M.Bhan
S/o Late Jagataran Nath Bhan
16-A, New Ram Nagar
Adhartal, Jabalpur.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its Secretary
Ministry of Agriculture
New Delhi.
2. The President
Indian Council of Agriculture Research
Krishi Bhawan, Dr.Rajendra Prasad Road
New Delhi.
3. The Director General
ICAR, Krishi Bhawan, New Delhi.
4. The Secretary
ICAR, Krishi Bhawan, New Delhi.
5. The Director (Vigilance)
ICAR, Krishi Bhawan, New Delhi.

Respondents.

(By advocate Shri S.A.Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following main reliefs:

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- (i) Set aside the impugned disciplinary proceedings Annexure A1, disagreement note Annexure A6 and the punishment order dated 29.9.2003 Annexure A10.
- (ii) Direct the respondents to provide all consequential benefits to the applicants as if the aforesaid impugned orders are never passed.

2. The brief facts of the case are that the applicant who working as Director of national Research Centre for Weed Science (NRCWS) since 1989 received a charge sheet dated 27th October, 1997 under Rule 14 of the CCS (CCA) Rules, 1965 (Annexure A1). The charge sheet contained the allegations of the year 1989 and 1990. The allegations which had been replied by the applicant way back in the year 1992 were denied in toto and he filed a detailed reply dated 9.11.97. (Annexure A2). On conclusion of the enquiry, a show cause notice dated 13/15.1.2003 was issued, whereby along with the finding of the inquiry officer, a dissenting note (Annexure A6) was supplied to the applicant. In the meantime, the applicant retired on attaining the age of superannuation. The enquiry officer found that the charges against the applicant were not proved and exonerated him. However, the disciplinary authority disagreed with the findings of the enquiry officer. The applicant preferred a representation dated February, 2003. Thereafter the applicant received the impugned order dated 29.9.2003 whereby the punishment of 15% cut in pension is imposed on the applicant by invoking Rule 9 of CCS (CCA) Rules, 1979. The impugned order is issued as per the advice tendered by the Central Vigilance Commission (CVC). Before passing the impugned order, the UPSC was to be consulted. The applicant has not committed any misconduct. Charge No.1 is not proved. The disciplinary authority in the disagreement note traveled beyond the scope of the record. Challenging the impugned order, the applicant has filed this OA.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that on the basis of the alleged allegations pertaining to the year 1989-90, a charge sheet dated 27.10.1997 was issued to the applicant, i.e. after 8 years. Since the applicant's explanation was sought

for in the year 1992, it is clear that the allegations are well within the knowledge of the department. No explanation has been given by the respondents for the belated enquiry. The OA deserves to be allowed solely on this ground. The enquiry officer has exonerated the applicant from the charges vide Annexure A7. The findings of the disciplinary authority are mechanical in nature and without considering the defence of the applicant, he imposed the punishment to a retired employee. Hence the OA deserves to be allowed.

4. In reply, the learned counsel for the respondents argued that some written as well as oral complaints were received by the respondents against the applicant. The respondents had called for explanation from the applicant regarding the allegations. The applicant submitted his comments on 15.1.1992. The applicants adopted delaying tactics and requested that the case against him may be closed. The reply submitted by the applicant on the enquiry report and on the tentative views of the Council was received in the ICAR HQ and the same was referred to the CVC for its advice. The disciplinary authority after considering the findings of the inquiry officer, submissions made by the applicant and the advice of the CV C and other facts and circumstances of the case had decided to impose a penalty of 15% cut in pension. The learned counsel further argued that since the advice of CVC is a procedural matter, it is not mandatory to obtain comments of the applicant on the advice given by the CVC. Therefore, it is not mandatory that the said advice ought to have been given to the applicant to put forth his case before inflicting any punishment. The respondents have conducted the whole departmental proceedings in accordance with the rules and they have passed the impugned order perfectly in accordance with rules. Hence the OA deserves to be dismissed.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the enquiry officer has exonerated the applicant from both the charges levelled against him. We have perused the



report of the enquiry officer. But the disciplinary authority has given a dissenting note against it. We have perused the dissenting note in which no reasons are assigned to justify the same. He has simply repeated the charges levelled against the applicant and he has not considered the report submitted by the enquiry officer and the contentions of the applicant also. We have also perused the impugned order in which the disciplinary authority has mentioned that "now, therefore, having regard to the findings of the Inquiry Officer, submissions of the Charged Officer, advice of the CVC and other circumstances and facts of the case, the President, ICAR, is satisfied that good and sufficient reasons exist for imposing the penalty of 15% cut in pension." We have already discussed ^{by} ~~that~~ that the enquiry officer had exonerated the applicant from both the charges as they were not proved. We have perused the statement recorded ^{by} ~~the~~ the applicant himself. The presenting officer did not cross examine the applicant also. Under these circumstances, the finding of the disciplinary authority in passing the penalty order on the basis of the findings of the enquiry officer is apparently baseless. The disciplinary authority has further mentioned that the advice of the CVC and other facts and circumstances of the case were not discussed in his order and admittedly the copy of the advice of the CVC was not furnished to the applicant. We have perused the ruling cited on behalf of the applicant in (1993) 1 SCC 13 – State Bank of India and another Vs. B. Aggarwal and another, decided on October 13, 1992 – in which the Hon'ble Supreme Court has held that "order of punishment passed by the disciplinary authority vitiated for violation of principles of natural justice in denying the respondent copy of recommendation of CVC which was prepared behind his back without his participation and taking decision against him relying on that recommendation" and further held that "non supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry." The argument that it is not mandatory that the

advice of the CVC ought to have been given to the applicant cannot be accepted. In the present case, admittedly, the copy of the advice of the CVC was not supplied to the applicant. It is also an admitted fact that it was prepared behind the back of the applicant.

6. In view of the aforesaid principles laid down by the Hon'ble Supreme Court, we are of the considered opinion that the OA deserves to be allowed and accordingly the impugned order dated 29.9.2003 (Annexure A10) is quashed and set aside.

7. The OA is disposed of as above. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

परिचालित करने वाला.....

(1) सचिव, उच्च न्यायालय, जबलपुर

(2) आदेशक श्री/श्रीमती/श्री.....के काउंसल

(3) राज्य की श्री/श्रीमती/श्री.....के काउंसल

(4) न्यायालय, कोर्ट/आ. न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

28/8/05

S.P. Singh Dev 038

I. D. Sharma Dulekar

28/8/05

Issued
On 23.8.05